

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ANGEL D. MORALES VALLELLANES

Plaintiffs,

v.

CIVIL NO. 97-2459 (JAG/GAG)

JOHN E. POTTER, et. al.

Defendants

OPPOSITION TO MOTION TO VACATE

TO THE HONORABLE COURT:

COME NOW the defendants and through the undersigned attorneys respectfully submits his Opposition to Plaintiff's Motion to Vacate Order and/or Modify Order and Reply to Opposition to Plaintiff's Motion and Request for Sanctions to Defendants (Docket Entry No. 293). The grounds for defendants' opposition are as follows:

1. On September 8, 2006, this Honorable Court precluded the parties from presenting psychiatric testimonies at the trial for this case. (Docket Entry No. 292).
2. On September 12, 2006, Plaintiff filed his Motion to Vacate as a last ditch effort to move this Honorable Court to allow his expert testimony.
3. Plaintiff's self-serving allegations that on Friday, June 30, 2006 he visited the United States Attorney's Office to deliver his expert report and that a security guard by the name of Ray Angleró told him that the U.S. Attorneys' office was closed is new to the Defendants. We have now learned that this Mr. Angleró is a security guard who works for the

Fonalledas' enterprises, owner of the building which houses the U.S. Attorneys' Office. The defendant is without knowledge of the factual scenario alleged by the Plaintiff at Paragraph 2 of Docket Entry No. 293, except for the fact that on June 30, 2006, the U.S Attorneys' Office did close at 3:00 pm, but the U.S.A.O's security guard stayed until 5:00 p.m.

4. If Plaintiff's intention was to timely deliver his expert report and comply with the Court's Order, he had various options available to him when he was confronted with the foregoing scenario. The Plaintiff or his attorney could have:

- a) faxed the expert report to the United States Attorney's Office; or,
- b) Scan the expert report and electronically mail it to the undersigned or his legal assistant;
- c) Pursuant to this Court's Standing Order for CM/ECF¹, he could have filed a Motion to the Court informing of his attempts to timely deliver the expert report using the CM/ECF system, which will submit notification of such filing to the undersigned and his legal assistant.

The plaintiff did not pursue any of the foregoing options.

¹ Local Rules II, B, 1, a - The System's e-mailing of the "Notice of Electronic Filing" shall be the equivalent of service of the pleadings or other paper by first class mail, postage prepaid. b. Once the Electronic Case Filing System sends the "Notice of Electronic Filing," it is presumed that it reached the attorney's e-mail address, unless the e-mail bounces back to the Electronic Case Filing System.

5. If one considers all the options that were available to the Plaintiff to ensure the timely delivery of the expert report, and, thus, comply with the Court's Order and that he has waited three and a half months to raise this issue before the Honorable Court, the forced conclusion is that he never had any real intention to comply with the Court's Order and now, conveniently argues otherwise because the Court has precluded his expert report..
6. The Court granted the parties the opportunity to reach an agreement but the Plaintiff scuffed at the Court's Order at Docket Entry No. 292 and failed to appear without any excuse whatsoever to the prescheduled appointment with Dr. Ramón Fortuño for plaintiff's psychiatric examination and evaluation. The foregoing confirms a continuous intention of the plaintiff to belately comply with the Court's Orders. Now, after the fact, he argues otherwise with the sole purpose of serving his own interests.

WHEREFORE, the defendants respectfully request from this Honorable Court that it deny Plaintiff's Motion to Vacate as hereinabove set forth.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was filed with the Clerk of the Court using CM/ECF system, which will submit notification of such filing to: Miguel Miranda, Esq.

RESPECTFULLY SUBMITTED in San Juan, Puerto Rico this 13th day of September 2006.

ROSA EMILIA RODRIGUEZ VELEZ
United States Attorney

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